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EXAMINER

SHEDRICK, CHARLES TERRELL

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2617

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/623,156
Filing Date: July 21, 2003
Appellant(s): POHUTSKY ET AL.

MAILED

MAR 22 2007

Technology Center 2800

William H. Bollman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/30/06 appealing from the Office action mailed
5/8/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,560,456 B1	Lohtia et al.	05-2003
6,456,852 B2	Bar et al.	09-2002
6,131,028	Whittington, Michael L	10-2000

2004/0203922 A1

Hines et al.

10-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1,2,10,11,12,19,20,21,23,24, 26,27,29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lohtia (US 6,560,456)** in view of **Whittington U.S. Patent No.: 6,131,028**

Regarding claims, 1,11,20,23,26,and 29, Lohtia et al. teaches a method and system of providing location-based reference information in a wireless network comprising: receiving an information telephone call from a subscriber at a mobile switching center, **(Col. 5 line 66-Col.6 line 5)**, using a location based service to obtain a location of said subscriber **(Col. 2 line 40, Col. 4 Line 32, and Col. 5 line 30)**; retrieving a short message relating to said location based on requested information, and transmitting said retrieved short message to said subscriber **(Col. 3 Lines 35-42, Col. 4 Lines 48-50, Col. 5 lines 56-59, and Col. 5 Line 66-Col.6 line 5)**.

However, Lohtia et al. does not specify that the location-based service to obtain a location of the subscriber is a wireless service and a telephone number initiating said telephone call including at least one auxiliary digit (feature code) beyond those associated with the information telephone call; retrieving a message relating to said location based on requested information associated with said at least one auxiliary digit. For example, Lohtia teaches location information based on current location of subscriber as cited above, but does not spell out if the system finds the user or if the user enters his location in his profile.

In the same field of endeavor, Whittington, clearly show and disclose a location-based service to obtain a location of the subscriber is a wireless service **(abstract, columns 2-5)** and a telephone number initiating said telephone call including at least one auxiliary digit (feature code) beyond those associated with the information telephone call **(column 3 lines 22-35 and column 4 lines 53-65)**; retrieving a message relating to said location based on requested

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information associated with said at least one auxiliary digit (i.e., a feature code can be used to obtain directions to the nearest gas station)(column 3 lines 22-35 and column 4 lines 53-65).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include a feature code appended to a telephone number as taught by Whittington for the purpose of automating a location finding service.

Regarding claims 2,12,21,24,27, and 30 and as applied to claims 1,11,20,23,26, and 29, Lohtia et al. clearly teach the claimed invention except the method and system wherein at least two auxiliary digits are included with said information telephone call.

In the same field of endeavor, Whittington clearly show and disclose the method and system wherein at least two auxiliary digits are included with said information telephone call (column 3 lines 22-35 and column 4 lines 53-65).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include at least two auxiliary digits with said information telephone call as taught by Whittington for the purpose of automating a location finding service.

Regarding claims 10 and 19 and as applied to claims 1 and 11, Lohtia et al. clearly disclose the claimed invention except a method of providing location-based reference information in a wireless network according to claim 11, wherein: said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber.

In the same field of endeavor, Whittington clearly show and disclose except a method of providing location-based reference information in a wireless network according to claim 11,

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wherein: said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber (**column 4 line 60-65**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. to include said location of said subscriber is determined using a known location of a cell/sector servicing said subscriber as taught by Whittington for the purpose of establishing a point of reference in terms of location services.

Claims 3,4,7, 8,9,13,14,17,18,22,25,28,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lohtia et al. (US 6,560,456)** in view of **Whittington U.S. Patent No.: 6,131,028** and further in view of **Bar et al. (US 6,456,852)**.

Regarding **Claims 3,13,22,25,28, and 31** and as applied to **claims 1,11,20,23,26, and 29**, Lohtia et al. as modified by Whittington clearly teach claimed invention. Lohtia further teaches that an information number can be any number which would obviously include the dialed digits "4-1 -1" (**Col. 5 lines 42-44**).

Although, the dialed digits "4-1-1" is a well known telephone number for information calls, Lohtia et al. as modified by Whittington does not specifically state that an information number uses the dialed digits "4-1-1".

In the same field of endeavor, Bar et al. teaches the information number being the dialed digits "4-1-1" (**Col. 3 Line 15**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Lohtia et al. as modified by Whittington to include the dialed digits "4-1-1" as the information number utilized for location finding services as taught by Bar et

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al. By using the dialed digits "4-1-1" it is obvious that dialing for information could be further automated.

Regarding claims 4, 8, 9,14,17, and 18 and as applied to claims 1, and 11, Lohtia et al. as modified by Whittington clearly disclose the claimed invention except teaching that the subscriber can be located using wireless or cellular signaling, time difference of arrival, and time of arrival.

However, in the same field of endeavor, Bar et al. teaches that the subscriber can be located using wireless or cellular signaling (**Col. 5 lines 37-49**), time difference of arrival (**Col. 3 line 47**), and time of arrival (**Col. 3 line 46**).

Therefore it would have been obvious to a person at the time the invention was made to modify Lohtia et al. as modified by Whittington to include or cellular signaling, time difference of arrival, and time of arrival as taught by Bar et al. for the purpose of location services.

Regarding claim 7 and as applied to claim 1 above , Lohtia et al. as modified by Whittington clearly disclose the claimed invention except teaching that the location is determined by using a network generated Location based on a centroid of a cell site sector's radio frequency polygon.

However, in the same field of endeavor, Bar et al. teaches that location determined by using a network generated Location based on a centroid of a cell site sector's radio frequency polygon (**Col. 3 Lines 25-35**).

Therefore it would have been obvious to a person at the time the invention was made to modify Lohtia et al. as modified by Whittington to include a location determined by using a

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network generated Location based on a centroid of a cell site sector's radio frequency polygon as taught by Bar et al. for the purpose of location services.

Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lohtia et al. (US 6,560,456)** in view of **Whittington U.S. Patent No.: 6,131,028** and further in view of **Hines (US2004/0203922)**.

Regarding claims 6 and 16 and as applied to claims 1 and 11 above, the Lohtia and Whittington combination teaches all the particulars of the claims except locating the subscriber using angle of arrival.

However, Hines teaches locating a wireless device using angle of arrival (**Page 2 (0033)**).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Hines into that of the combination for the obvious reason of having another way to locate the subscriber.

(10) Response to Argument

Regarding Applicants arguments (A) that Claims 1,2,10-12,19-21,23-34,26,27,29-30 are not obvious under USC 103(a) over Lohtia in view Whittington, Applicant admits on page 4 lines 15-17 of the Appeal brief that "Whittington discloses the use of a telephone number associated with a feature code, the telephone number being a destination for desired information", However, in lines 21 and 22 the Applicants argue "Whittington's destination number for call forwarding including a feature code is not a telephone number initiating a call". The above argument is not only a contradiction to the admission on page 14 lines 15-17 where it was stated by the Applicant that Whittington uses a telephone number, but the above is also contradictory to the disclosure of

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Whittington as shown below. To establish an understanding of terminology, a person of ordinary skill in the art shall understand that a telephone number is used e.g., to make a call to some destination. By definition a telephone call is a connection over a telephone network between the calling party and the called party. The called party is a person (or device) that answers a telephone call. Thus Whittington states in col. 3 lines 36 and 37 that the feature code and telephone number are received by the MSC as an incoming call. The previous disclosure further contradicts that Applicants assertion that "Whittington's destination number for call forwarding including a feature code is not a telephone number initiating a call". It is clear from lines 36 and 37 in col. 3 that Whittington notes that the telephone number makes a call.

The Examiner respectfully noted the following interpretation of the reference in Final Office Action dated 5/8/08, however Applicant has not shown reasons that the written claim language distinguishes the prior art cited to date. Please note **col. 3 lines 23- 35**; Whittington reads on the claimed limitation "a **telephone number (i.e., 2145551212)** initiating the telephone call including **at least one auxiliary digit** (i.e., *123 or 123#) **appended** (i.e., add, attach, tag on) to the telephone number(i.e., **2145551212**)". The feature codes are appended digits as recited in the claimed limitation and therefore reads upon the claimed embodiment.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

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USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). MPEP 2143.01

There are three possible sources of motivation, nature of the problem to be solved, teaching of the prior art and knowledge of a person of ordinary skill in the art.

In determining the propriety in the first instance, it is necessary to ascertain whether or not the reference teaching would appear to be sufficient for one of ordinary skill in the art having the references before him/her to make the proposed substitution, combination, or other modification. In *Ruiz v. Ab. Chance Co.*, 357 F.3d 1270, 69 USPQ2d 1686 (Fed. Cir. 2004), The court found motivation to combine the references to arrive at the claimed invention in the “nature of the problem to be solved” because each reference was directed to the same problem. The courts also *rejected* the notion that “an express written motivation to combine must appear in prior art references...”*Id.* at 1276, 69 USPQ2d at 1690. See also *In re Kotzab* and *In re Fine*. The teaching suggestion motivation must be found either explicitly or implicitly. *Lohitia* and *Whittington* both relate to providing enhanced (e.g., automated etc.) services to telephone subscribers based on in part using feature codes.

Regarding Applicants arguments (B) Claims 3, 4, 7-9, 13, 14, 17, 18, 22, 25, 28 and 31 are not obvious under 35 U.S.C 103(a) over *Lohtia* in view of *Whittington* and *Bar*.

Applicant admits on page 4 lines 15-17 of the Appeal brief that “*Whittington* discloses the use of a telephone number associated with a feature code, the telephone number being a destination for desired information”, However, in lines 21 and 22 the Applicants argue “*Whittington*’s destination number for call forwarding including a feature code is not a telephone number initiating a call”. The above argument is not only a contradiction to the admission on page 14

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lines 15-17 where it was stated by the Applicant that Whittington uses a telephone number, but the above is also contradictory to the disclosure of Whittington as shown below. To establish an understanding of terminology, a person of ordinary skill in the art shall understand that a telephone number is used e.g., to make a call to some destination. By definition a telephone call is a connection over a telephone network between the calling party and the called party. The called party is a person (or device) that answers a telephone call. Thus Whittington states in col. 3 lines 36 and 37 that the feature code and telephone number are received by the MSC as an incoming call. The previous disclosure further contradicts that Applicants assertion that "Whittington's destination number for call forwarding including a feature code is not a telephone number initiating a call". It is clear from lines 36 and 37 in col. 3 that Whittington notes that the telephone number makes a call.

The Examiner respectfully noted the following interpretation of the reference in Final Office Action dated 5/8/08, however Applicant has not shown reasons that the written claim language distinguishes the prior art cited to date. Please note **col. 3 lines 23- 35**; Whittington reads on the claimed limitation "a **telephone number (i.e., 2145551212)** initiating the telephone call including **at least one auxiliary digit** (i.e., *123 or 123#) **appended** (i.e., add, attach, tag on) to the telephone number(i.e., **2145551212**)". The feature codes are appended digits as recited in the claimed limitation and therefore reads upon the claimed embodiment.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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Regarding Applicants arguments (C) Claims 6 and 16 are not obvious under 35 U.S.C. § 103(a) over *Lohtia* in view of *Whittington* and *Hines*.

Applicant admits on page 4 lines 15-17 of the Appeal brief that “*Whittington* discloses the use of a telephone number associated with a feature code, the telephone number being a destination for

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Charles Shedrick



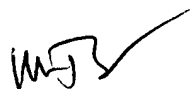
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